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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	No. P1300CR20081339
)	
Plaintiff,)	Div. 6
)	
vs.)	DEFENSE POSITION ON
)	HARTFORD EVIDENCE AND
STEVEN CARROLL DEMOCKER,)	POSSIBLE STIPULATION
)	
Defendant.)	
)	
)	
)	UNDER SEAL

Steven DeMocker, by and through counsel, respectfully provides the Court with his position regarding a possible stipulation regarding Hartford Insurance. This request is based on the due process clause, the Eighth Amendment and Arizona counterparts, Arizona Rules of Evidence, Arizona Rules of Criminal Procedure and the following Memorandum of Points and Authorities.

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DIVISION 6

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Lastly, these issues should be precluded based on Rule 404(b). The State is offering this evidence to impugn Mr. DeMocker's character and the character of his counsel and family. The evidence is not relevant to motive. How the money was paid, the amount of money paid to defense counsel, and the purpose of the money adds nothing to what Mr. DeMocker's motive might have been prior to Carol Kennedy's murder. For this reason, the evidence is not offered to prove motive and should be precluded based on Rule 404(b).

The Court raised the issue of the absence of surprise to the defense that the Hartford Insurance policies are relevant. While it is true that the fact of these policies is not a surprise to the defense, it is a complete surprise to the defense that the State would misrepresent to the jury that Mr. DeMocker sought the insurance proceeds for himself, as if the State was not aware that Mr. DeMocker was seeking to disclaim his benefits to his daughters. Furthermore, while the issue of avoiding surprise is one purpose of the Rule, the focus and plain language of the Rule to determine whether late disclosure is admissible, is the State's due diligence. The State's untenable position apparently was that it had no duty to inquire of Hartford between 2008 and the date of trial even though it knew that Mr. DeMocker was seeking to disclaim his benefits and even though the State was in contact with Hartford. The other purposes of the Rule include a full and fair opportunity to resolve evidentiary issues pretrial and avoid the kind of prejudicial delay occasioned by the State's failure to disclose evidence in advance of trial. In this instance this issue would have been subject to motions in limine and potentially extended evidentiary hearings on the 404(b) issues. This did not occur precisely because the State failed to exercise due diligence. This has prejudiced Mr. DeMocker and his defense. For this reason, this evidence and these witnesses should be precluded.

1 **II. The Opening Statements Do Not Make the Issue of Mr. DeMocker's**
2 **Disclaimer of the Hartford Insurance Benefits Relevant and**
3 **Admissible**

4 The State, in its opening statement, made the following statement:

5 “The evidence will show that at the time of her death, Carol Kennedy’s
6 death, her murder, that Steven DeMocker was the owner and beneficiary
7 of two life insurance policies on the life of Carol Kennedy. The total
8 value of those life insurance policies was \$750,000. One was \$500,000,
9 the other was \$250,000. And the evidence will show that he made a claim
10 for those benefits on August 20th of the year 2008.”

11 The State knew that this recitation—that there would be evidence that Mr.
12 DeMocker made a claim for \$750,000 on August 20, 2008—was designed to
13 mislead the jury and if accepted would have caused the jury to accept as true a
14 false understanding of the facts.. The State had in its possession an email from
15 Steve DeMocker, dated September 3, 2008, to Hartford Life Insurance stating
16 that “[t]o repeat the position I described to you when we first spoke on the phone,
17 I do not wish to receive the death benefit from either policy. Instead, as you
18 know, I’m trying to determine if there is a way to disclaim the proceeds to our
19 daughters, or failing that, to determine the most tax-efficient way of gifting the
20 money to them for their sole benefit.” From the outset—well before he was
21 charged, but after he knew he was a suspect—Mr. DeMocker was trying to find a
22 way to make clear that he was NOT making a “claim for those benefits.” That is
23 precisely what he was telling the Hartford Insurance Company on August 20,
24 2008.

25 The State has had this email since November of 2008. The statement that
26 Mr. DeMocker had made a claim for these benefits, without mention of this
27 email or the facts therein, was false and misleading.

28 Mr. Sears’ response--in the defense Opening Statement--that Mr.
DeMocker had disclaimed his interest in the Hartford policies and the benefits

1 had been paid to his daughters was both factually correct and a necessary
2 correction of the account given by the State to the jury.

3 The Court has asked whether the defense Opening might have left open
4 the question of what Mr. DeMocker's disclaimer meant, given that his daughters
5 ultimately used some of their insurance money to defray their father's defense
6 costs. Leaving aside the arguments above, the issue of the disclaimer was
7 necessarily raised by the State when it misrepresented the known facts to the
8 jury. Mr. Sears' response was simply clarifying what the State knew to be true
9 all along in this case, that Mr. DeMocker sought a way to disclaim the proceeds
10 to his daughters. As outlined above, what Mr. DeMocker's daughters did with
11 their money is not relevant. The meaning of the disclaimer, that Hartford
12 Insurance Company then distributed the funds to Mr. DeMocker's daughters
13 where they would not previously distribute the proceeds, is also not relevant.
14 The only relevance of what happened to the Hartford Insurance policies after
15 Carol Kennedy's death was to clarify the State's misstatement to the jury that
16 Mr. DeMocker made a claim for the insurance proceeds as if that were the whole
17 story. The State should not now benefit from its misstatement. This issue is not
18 relevant and the opening statements do not make the meaning of the disclaimer
19 relevant to the issues in this trial.

20
21 **III. Possible Stipulation to Address the Court's Concern About Mr.
22 DeMocker's Disclaimer of Hartford Insurance Benefits**

23 Given what we have said in our pleadings and in the sealed proceeding
24 yesterday, there should be no further testimony permitted on this topic. If, however, the
25 Court should conclude, over counsels' objections, that the meaning of what Mr.
26 DeMocker's "disclaimer" of Hartford Insurance benefits means is relevant and
27 admissible, counsel provides the following suggestion.

1 403 implications while providing the jury with the information the State wants to put in
2 front of the jury.

3 The risk of permitting the State to go beyond this stipulation and proposed orders
4 is obvious from the State's July 12, 2010 under seal filing on the Determination of
5 Counsel. The State would intend, if allowed, to accuse the Defendant and his lawyers
6 of "fraud," "theft," "breach of fiduciary duty," and "money laundering." The State
7 would also—we now know clearly from the statements in Court on July 14—like to
8 argue that the payments of money for Mr. DeMocker's defense is somehow proof that
9 he intended to kill Carol Kennedy to get these insurance proceeds.

10 If permitted, the State has now left no doubt but that it will argue that it may tell
11 the jury that Mr. DeMocker, aided by his lawyers, "looted" the estate of Carol Kennedy,
12 that they did so with the complicit aid of his daughters, Renee Girard, his parents, and
13 almost anyone else who might be heard to speak favorably of Steve DeMocker. The
14 State demonstrated as much at the hearing on July 14. The State made the following
15 accusations at that hearing, "[a]nd yet he [Mr. DeMocker] manages to manipulate, with
16 some assistance from counsel, where he gets the payments of those proceeds. They are
17 - \$700,000 of those proceeds are paid for his benefit. And he's got this plan in place,
18 and he's made his lawyers a part of his plan." (Page 25:23-26:3) Further, "[t]he State
19 maintains that he had that plan in place before that [the murder]. And we believe that
20 there will be evidence in trial that demonstrates that this is just a continuation of his plan
21 to murder Carol Kennedy, get payment of her insurance proceeds, get ride of her
22 alimony problems, etc. *And he manipulates his counsel into assisting him to get those*
23 *proceeds.*" (page 26: 7-13). And on and on, "[a]nd then on top of that, on the same day
24 he signs the resignation of Katherine DeMocker document and acceptance by Renee
25 Girard – that is July 10 of 2009 – on that same day he signs it because Mr. Sears
26 presents it to him that day, that's the day he's in here with counsel on an ex parte
27

1 hearing to determine his indigency. And that day is the day that his indigency is
2 determined. And shortly thereafter Yavapai County steps up to the plate and starts
3 paying apparently huge bills for Mr. DeMocker' case. Even though he and his counsel
4 are knowing at that point in time that he's going to be receiving \$700,000 in life
5 insurance proceeds through a shell game" (26:14-27:4). And even further
6 inflammatory "[t]hough a shell game maneuvering through accounts to get paid back to
7 counsel John Sears and Osborn Maledon." (27:4-6). "And in this particular case,
8 defense counsel have, basically, gotten in bed with Mr. DeMocker and helped him do
9 what he had set out to do prior to the time of the homicide. Now I'm not saying that
10 they intentionally did that. They were manipulated into doing that. And I think that
11 they had blinders on." The State should not be permitted to make theses unsupported,
12 inflammatory allegations part of this trial.

13 CONCLUSION

14
15 Defendant Steven DeMocker, by and through counsel, hereby requests that this
16 Court prohibit the State from offering testimony from the late disclosed witnesses or
17 from introducing late disclosed evidence or any argument based thereon related to the
18 Hartford Insurance policy payouts, but if there is to be any statement made to this jury it
19 should go no farther than the single sentence proposed in this pleading.

20 DATED this 5 day of July, 2010.

21
22 By: _____

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ORIGINAL of the foregoing hand delivered for
filing this 15th day of July, 2010, with:

Jeanne Hicks
Clerk of the Court
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COPIES of the foregoing hand delivered this
this 16th day of July, 2010, to:

The Hon. Warren R. Darrow
Judge Pro Tem B
120 S. Cortez
Prescott, AZ 86303

Joseph C. Butner, Esq.
Jeffrey Paupore, Esq.
Prescott Courthouse basket



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